



The US SOFA in South Korea (FKDC-SA)



THE “SOFA”

Not a *couch* . . .



But a
fundamental
international
agreement
between allies



US-ROK STATUS OF FORCES AGREEMENT (SOFA)

- Implements Mutual Defense Treaty of 1953
 - Core agreement in which ROK granted US right to “dispose land, air and sea forces” in Korea to “deter armed attack”
- Our basic stationing agreement
 - *Executive Agreement* governing most aspects of stationing US military forces in Korea
 - Supersedes relevant domestic law of both nations
 - Entered into force in 1967 after protracted negotiations

BASIC PURPOSES OF SOFA

- Defines legal rights and obligations of both governments (i.e., “status of forces”)
- Provides “facilities and areas” for use by US forces for purposes of Mutual Defense Treaty
- Balances basic rights of US citizens with obligation to respect Korean law
- Ensures supportive environment for allied forces (i.e., provides US “quality of life”)



SOFA STATUS

- US Military while in the ROK
- US Civilian Component:
 - US Civilians in “employ of”, “serving with”, or “accompanying” US armed forces (not “ordinarily resident” in Korea) and Technical Representatives
- Invited Contractors
- Dependents of the above
- (Those assigned to JUSMAG-Korea and the American Embassy are covered by separate



CRIMINAL JURISDICTION

- Exclusive:
 - Security Offenses
- Concurrent:
 - US Military Primary Jurisdiction:
 - Offenses solely against property or security of US
 - or involving SOFA status victim
 - Official Duty Cases
 - ROK Primary Jurisdiction:
 - **ANY OTHER OFFENSE**



WAIVER OF PRIMARY JURISDICTION

“ The (ROK), recognizing that it is the primary responsibility of the (US) military authorities . . . to maintain good order and discipline . . . will, upon request . . . waive their primary right to exercise jurisdiction . . . except when they determine that it is of particular importance that jurisdiction be exercised by the (ROK).”

RIGHTS OF ACCUSED PERSONS (Article XXII)

- To have a speedy trial
- To be informed in advance of the charges
- To confront the witnesses against him/her
- To have compulsory process for favorable witnesses
- To have legal representation of choice
- To have a competent interpreter
- To communicate with a US representative and have a US representative (trial observer) present at trial



MORE BASIC RIGHTS



- To appeal a conviction or sentence
- To receive credit for pretrial confinement
- To not be held guilty of an offense which did not exist at the time offense committed
- To not receive heavier penalty than applicable when offense committed or adjudged by initial trial court
- To not be held guilty on basis of evidence rules or requirements of proof altered to prejudice since offense

AND MORE RIGHTS . . .

- Right against self-incrimination
- Right against cruel and unusual punishment
- To not be prosecuted or punished by legislative/executive act
- Right against double jeopardy
- To not stand trial if not physically or mentally competent to participate in defense
- To appear in appropriate military or civilian attire
- Rights against involuntary confessions/torture



1988-91 SOFA Revision

Criminal Jurisdiction:

- Eliminated “*automatic waiver*” of jurisdiction
- Eliminated list of offenses of “*particular importance*”
- Required US Representative to be present during questioning of suspects
- Required “official duty” decisions by general officer

1995-2001 SOFA Revision

- Criminal Jurisdiction: ROK may receive:
 - custody upon indictment in serious cases;
 - and retain custody upon arrest in some of the most serious murder or rape cases (yet to be defined);
 - in exchange for significant due process rights for accused US personnel in ROK pretrial confinement



Facilities and Areas

- Article II: Grants US “*use*”, not ownership
 - Those in use when SOFA went into effect (1967); also provides for future agreements
 - Must be returned when no longer needed
 - Annual review required; ROK requests at any time
 - Replacement facilities
- Article III: US may “take all measures necessary for their establishment, operation, safeguarding and control”



Facilities and Areas

- Article IV: When returned . . .
 - US not required to restore to original condition
 - ROK not required to pay for improvements
 - Each may take “removable” items they paid for
- Article V: Cost and Maintenance
 - US bears cost of maintenance of forces, *except*
 - ROK to furnish **without cost** all facilities and areas, including rights of way, granted in Article II; **must compensate land owners**



Environmental Protection (New)

(Article III, Agreed Minutes, New Paragraph 2)

- US and ROK governments recognize importance of environmental protection
- USG commits to implement SOFA consistent with protection of environment and health and confirms its policy to *respect* relevant ROK environmental laws
- ROKG confirms its policy to implement its environmental laws with regard for health and safety of US personnel

Environmental Protection

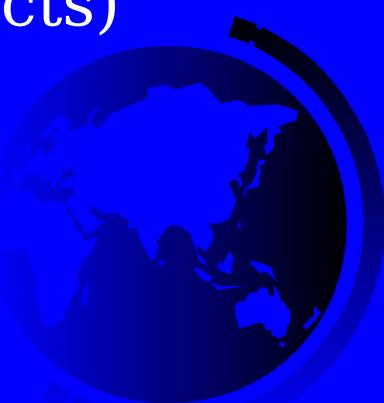
(2001 Memorandum of Special Understandings)

- US-ROK to cooperate on environmental governing standards
- US-ROK to share information and provide for appropriate access to USFK facilities & areas
- US-ROK to consult on risks *and* USG confirmed its policy to conduct environmental performance assessments; ROKG confirmed its policy to respond to outside contamination sources that endanger health
- Environmental and relevant SOFA Subcommittees to meet regularly to discuss environmental issues



SOFA PRIVILEGES

- Exempt from ROK Income Taxes 
- Exempt from ROK Customs Duties:
 - Commissary (US Foodstuffs)
 - PX/BX & NAF Activities (US Products)
 - Duty Free Import
 - PCS Household Goods (up to 6 months)
 - APO (Reasonable Quantities)
 - POV
 - Military Mail (APO)



Control of Duty-Free Goods

- Except as mutually agreed, “goods imported into the (ROK) free of duty shall not be disposed of (in Korea) to persons not entitled to import such goods free of duty”.
- USFK required to “take such steps as are necessary to prevent abuse of privileges. . .”

Other 1988-91 SOFA Revisions



Facilities and Areas: Required annual review with a view towards returning unneeded facilities and areas

Nonappropriated Fund Organizations (NAFO): USFK to use “*reasonable and practical*” means to control access to clubs and recreational facilities by unauthorized persons

Labor: Korean employee labor practices must be in “*substantial agreement*” with ROK Labor law; agreed to joint review of removals

Plant Quarantine: Agreed to negotiate plant

Other 1995-2001 SOFA Revisions

- Guaranteed preferential hiring of Korean employees in exchange for allowing dependents of US military and civilian component to obtain jobs on ROK economy (w/o giving up SOFA A-3 visa)
- Agreed that minor traffic offenses involving military members or the civilian component resulting in property damage only will not be reported as a crime if covered by the Claims article or adequate insurance
- Streamlined mediation procedures for Korean labor disputes, using ROK Labor Relations Commission

1995-2001 SOFA Revision

- Agreed to “joint inspections” of animal and plant products brought into Korea for USFK use, under procedures to be established by Joint Committee
- Agreed to stronger measures to protect USFK facilities and areas from civilian encroachment
- Agreed to notify & consult regarding new construction
- Adopted civil process procedures for private lawsuits vs. US personnel



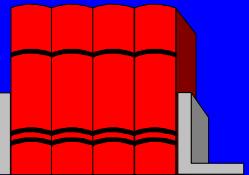
Delegation Recommendations

- Non-Appropriated Fund Organizations (NAFO) “Record of Discussions”:
 - Reconfirmed US commitment that only qualified persons may use NAFO facilities
 - Recommended Joint Committee conduct review to determine who may use NAFO facilities, the conditions of that use, and the appropriate means of assuring compliance
 - Recommended revision of 25 June 81 agreement regarding “Membership in the USFK Club System” by 31 Dec 2001



LAND

SOFA ARTICLES



- I Definitions
- II Facilities & Areas: Grant and Return
- III Facilities & Areas: Security Measures
- IV Facilities & Areas: Return of Facilities
- V Facilities & Areas: Cost and Maintenance
- VI Utilities and Services
- VII Respect for Local Law
- VIII Entry and Exit
- IX Customs
- X Access of Vessels and Aircraft
- XI Meteorological Services
- XII Air Traffic Control and Navigation
- XIII Non-Appropriated Fund Organizations
- XIV Taxation
- XV Invited Contractors



BUILDINGS



UTILITIES



VISAS



CUSTOMS



NAV AIDS



TAXES

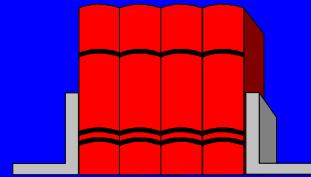


CLUBS



LABOR

SOFA ARTICLES



XVI	Local Procurement
XVII	Labor
XVIII	Foreign Exchange Controls
IXX	Military Payment Certificates (no longer used)
XX	Military Post Offices
XXI	Accounting Procedure
XXII	Criminal Jurisdiction
XXIII	Claims
XXIV	Vehicles and Driver's Licenses
XXV	Security Measures
XXVI	Health and Sanitation
XXVII	Enrollment and Training of Reservists
XXVIII	Joint Committee
XXIX	Entry Into Force of Agreement
XXX	Revision of Agreement
XXXI	Duration of Agreement



LOCAL PURCHASE



MAIL



CLAIMS



LICENSES



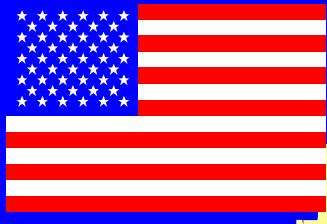
HEALTH



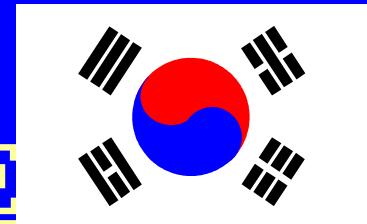
SOFA ARTICLE XXVIII

“ A Joint Committee shall be established as the means for consultation . . . on all matters . . . regarding the implementation of this Agreement.”





US-ROK SOFA JOINT COMMITTEE



**US Representative
Deputy Commander,
USFK**

**ROK Representative
Director General, North Ameri
Affairs Bureau, MOFAT**

- Substantive issues tasked to standing or ad hoc subcommittees for recommendation (may include negotiations in Joint Working Group)
- Issues may be raised by either side
- US/ROK Reps often take “exigent action” between meetings
- Joint Committee Minutes record binding agreements, positions

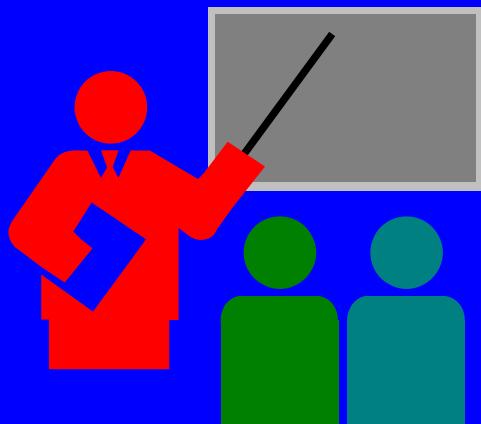


CURRENT ISSUES

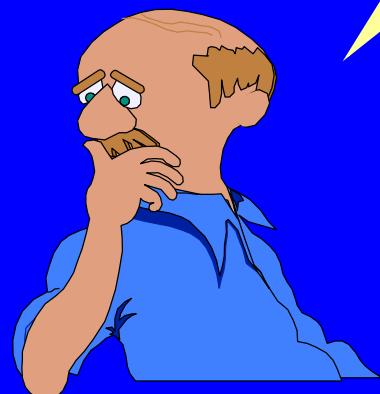
- Revised SOFA Implementation
 - Environmental Cooperation
 - Management of facilities & areas; new construction
 - Joint Inspection Procedures (Plant Quarantine)
- Burdensharing (Special Measures Agreement)
- Land Partnership Plan (LPP)
 - Encroachment/Land Use
 - Facility Relocations
 - SOFA Grants for Facilities and Areas
 - Housing



SO, AS YOU CAN SEE, THERE IS MORE TO THIS “SOFA” BUSINESS THAN ONE MIGHT THINK!



Still sounds like
a pretty “cushy”
job to me!





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